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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

Estate of KAY C. ROSS, Deceased.

B165697

(Los Angeles County
Super. Ct. No. BP070245)

KENT C. ROSS, as Executor, etc.,

Petitioner and Respondent,

v.

DON BLOCK,

Objector and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.

Harold I. Cherness, Judge. Affirmed.

David A. Kay for Objector and Appellant.

Overton, Lyman & Prince and Stephen L. Jones for Petitioner and Respondent.

* * * * *

Don Block appeals from a judgment entered in the probate of the estate of Kay Ross, finding the transfer from the decedent to her son, Keith Ross, of the family home (the Property) to be invalid. Block contends: “I. The trial court improperly applied a presumption to find undue influence in the execution of the October 16, 2000 deed from Kay C. Ross to her son Keith. [¶] II. Even if the finding of undue influence by Keith is sustained, there is no way that Don Block could have known about any undue influence. Therefore, Don Block took title as a bone fide purchaser for value. [¶] III. The joint tenancy deed was not void as an unlawful wager on the life of another.” We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Kay Ross died on September 30, 2001. Under the terms of her May 10, 1990 will, her other son Kent Ross was appointed executor of her estate. The 1990 will was admitted to probate on December 6, 2001.

Under the terms of the 1990 will, Kent was the beneficiary of the entire estate, except for \$1,000 bequeathed to Keith. The will provides, “I am mindful that the above distribution of my estate is not equal, but I have given it much thought and believe that KENT will take care of KEITH’S needs, and I request, but do not direct, that he use funds from the bequest to him, in his sole discretion, to assist KEITH whenever necessary.”

After Kay’s death, Kent discovered that she had transferred her interest in the Property to Keith on October 16, 2000. Kent also discovered that Keith had transferred his interest in the Property to himself and Block as joint tenants on June 7, 2001. The Property was the only asset of substantial value in the estate.

Kent, as executor of the estate of Kay C. Ross, filed a “Petition to Determine Title to Real Property” under Probate Code section 9860, on December 27, 2001. Block and Keith were served with the petition. The petition alleged lack of capacity and that Keith had unduly influenced his mother in connection with the transfer. Keith died on January

14 or 15, 2002. Block asserted affirmative defenses, including that he was a bona fide purchaser for value.

The case was tried to the court. The court found in favor of the estate and issued a 15-page statement of decision. The trial court entered judgment on January 10, 2003, ruling that the October 16, 2000 transfer was invalid. The court also imposed an equitable lien on the Property in the amount of \$10,000. This appeal followed.

Viewed in the light most favorable to the judgment, the record shows the following. Kay acquired the Property in 1955. She resided there until her death. Kay had two sons, Keith and Kent. Kent became a librarian, acquired a house of his own, and raised a family. Keith was an alcoholic who worked as a security guard in the 1990's. Keith had moved back to the Property to live with Kay by 1990.

Kay discussed the contents of her 1990 will with Kent, and directed him not to disclose its terms with Keith. Keith was not aware of the terms of the will. Kay told Kent that Keith frequently asked her to put the Property in Keith's name, but she would not do that because Keith was an alcoholic and a spendthrift.

By 2000, Kay, then aged 86, was bedridden and suffered from some dementia and short term memory loss.¹ Keith became her caretaker, looking after her needs, preparing her meals, and managing her finances. Kay lived on her retirement income as a former school teacher. Kay spent most days sleeping in her bedroom without television, radio, books or telephone. Except for monthly or twice-monthly visits from Kent, his family, and Kay's friend Ebba Martini, Kay saw only Keith.

Keith instigated the October 2000 transfer of the Property to him. In October 2000, Keith arranged and paid for the preparation of a deed transferring the Property from Kay to himself (Deed). Keith assisted Kay in signing the Deed. He arranged for

¹ Although Ebba Martini, Saba Haile, and Block testified that Kay remained lucid up until the time of her death, the trial court disbelieved that testimony.

Saba Haile to notarize the Deed and to have the Deed recorded. The Property was worth in excess of \$800,000 at the time.

The following month, Kay was admitted to the hospital due to extreme weakness. She told a social worker there that she owned the Property and that it was paid for in full.

Martini had been Kay's friend for 60 years, and visited her approximately twice a month. Their families had been friendly with each other over the years. Beginning in 1999, Martini's son Block drove Martini to the visits with Kay.

In May 2001, Keith lost his job and medical insurance. He was an alcoholic and a heavy smoker. He never exercised and had no hobbies, except very occasional fishing. He suffered from a number of serious medical problems.

During one of the visits, Keith discussed his financial concerns with Block. Keith told Block that Kay had deeded the Property to Keith. They agreed on an arrangement in which the Property would be transferred to Keith and Block as joint tenants. Block agreed to pay Keith \$750 per month for Keith's life, to pay property taxes and property insurance, and to perform maintenance and repair for the Property. Block agreed that he would make no use of the Property so long as Keith lived. Block agreed that if Keith moved from the Property, Block would rent the Property and Keith would receive the net rental proceeds.

On June 6, 2001, Block obtained a property ownership report on the Property from California Reporting Services, LLC. The report included the Deed. On June 7, 2001, Keith executed a deed transferring the Property from himself to himself and Block as joint tenants (Joint Tenancy Deed). Keith and Block executed a written agreement setting forth their financial arrangements.

Block made payments to Keith pursuant to their agreement. Block also performed minor repairs at the Property.

Kay died on September 30, 2001. In October 2001, Kent learned of the Deed and the Joint Tenancy Deed. Keith contacted Block by telephone and advised him that Kent was demanding that the Joint Tenancy Deed be rescinded and the Deed be voided. Keith

offered to rescind the agreement and the Joint Tenancy Deed and to refund Block all his money. Block refused.

In November 2001, Keith was admitted to the hospital in serious condition from alcoholism. He remained at the hospital and in a care facility until mid-December 2001. While in the hospital, Keith told Kent that Block had bought him a case of whiskey. Keith returned to the Property with instructions to drink no alcohol. After December 15, 2001, Keith did not drive or leave the Property except with the assistance of others.

On January 14, 2002, Block visited Keith for five or six hours. He left at approximately 6:00 p.m. During the visit, Block purchased Keith at least a six-pack of beer. Keith's body was discovered in his bed on the morning of January 15, 2002. An autopsy concluded that at the time of his death, Keith had 0.50 percent alcohol in his blood system and 0.26 micrograms per milliliter hydrocodone, an opiate ingredient of the pain killer Vicodin. The amount of either could have been fatal.

DISCUSSION

I. Standard of review

We review the record for substantial evidence to support the trial court's findings, resolving all conflicts in the evidence in favor of the prevailing parties and drawing all reasonable inferences in a manner that upholds the judgment. (*Cochran v. Rubens* (1996) 42 Cal.App.4th 481, 486.) We note that Block has failed to give a fair and balanced statement of the facts in his opening brief. When appellants challenge the sufficiency of the evidence, they must set forth all material evidence, not merely their own evidence. (*Toigo v. Town of Ross* (1998) 70 Cal.App.4th 309, 317; *County of Solano v. Vallejo Redevelopment Agency* (1999) 75 Cal.App.4th 1262, 1274.) Block's failure to do so is grounds for deeming his substantial evidence arguments waived. (*Toigo v. Town of Ross*, *supra*, 70 Cal.App.4th at p. 317; *County of Solano v. Vallejo Redevelopment Agency*, *supra*, 75 Cal.App.4th at p. 1274.) We have nevertheless reviewed the record and find that it supports the trial court's findings.

II. *Undue influence*

The trial court found that there was a presumption of undue influence pursuant to section 1575 of the Civil Code. Block contends that the trial court erred because the evidence did not establish that Keith coerced Kay by use of his confidential relationship and that Keith did not receive any undue benefit from the transaction. We disagree.

Section 1575, subdivision (1) of the Civil Code provides that undue influence consists of “the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him.” It has been interpreted as requiring a confidential or fiduciary relationship; active participation by the person alleged to have exercised the undue influence in the preparation or execution of the gift; and an undue benefit to such person. (See *O’Neil v. Spillane* (1975) 45 Cal.App.3d 147, 153-154 [presumption based upon confidential relationship, instigation of preparation of deed, and detriment to grantor and benefit to grantees].)

The court found that at all times relevant, there was a confidential relationship between Kay and Keith; Keith actively participated in the execution of the Deed; and Keith unduly benefited from the transfer of the Property to him. Substantial evidence supports the trial court’s findings.

The evidence shows that Keith’s relationship with Kay was confidential. He was Kay’s son, lived with Kay, and acted as her caregiver and financial manager.

Keith actively participated in the preparation and execution of the Deed. He initiated the transfer, arranged for the preparation of the Deed, assisted Kay in executing it, and arranged for recordation. Kay, moreover, received no independent advice in the matter of the transfer. (See *Sparks v. Mendoza* (1948) 83 Cal.App.2d 511, 514 [where a mother signed a quitclaim deed to a daughter with whom she lived and from whom she received business advice, without benefit of independent advice, the court affirmed a presumption of undue influence]; and see *Estate of Stephens* (2002) 28 Cal.4th 665, 677,

quoting *Sparks v. Mendoza, supra*, with approval, and fn. 5 [lack of independent advice is a factor to be weighed in determining whether the grantor acted voluntarily].)

Keith also received an undue benefit from the gift. Keith paid no consideration for the Property, which was worth in excess of \$800,000 and was the only asset of substantial value owned by Kay.

Citing *Buchmayer v. Buchmayer* (1945) 68 Cal.App.2d 462, 473 (*Buchmayer*), Block contends that there is no presumption of undue influence where there is no finding of coercion or intimidation. *Buchmayer, supra*, is distinguishable. In that case the court found that no confidential relationship existed between the parties. (*Id.* at p. 471.) *Goldman v. Goldman* (1953) 116 Cal.App.2d 227, relied upon by Block, is also distinguishable. There the court specifically stated that the evidence showed that the grantor “initiated in his own mind” the transfer of property. (*Id.* at p. 237.) Under the circumstances, Keith received an undue benefit from the transfer. The burden thus shifted to Block to show fairness and good faith in the transaction. (See *Estate of Stephens, supra*, 28 Cal.4th at p. 677; *Sparks v. Mendoza, supra*, 83 Cal.App.2d at p. 515.)

Block failed to demonstrate that the presumption was rebutted. Keith, as Kay’s son and her caretaker, was a natural object of Kay’s bounty. Under the terms of her existing will, however, he was to receive only \$1,000, along with a moral expectation that Kent would use the Property for Keith’s benefit. The bequest was based upon Kay’s assessment of Keith as an alcoholic and a spendthrift.² The trial court could infer that Kay would have resisted making an outright gift of her only significant asset to Keith because of his inability to manage his financial affairs and to control his drinking. There

² Although there was evidence that Keith properly managed Kay’s checking account during her decline, the trial court was not required to infer that Kay’s view of Keith’s abilities had changed for the better.

was no evidence that Kay was concerned that the Property would be lost because of her medical expenses. The evidence supports the trial court's finding that Keith unduly benefited from the transfer.

Estate of Stephens, supra, 28 Cal.4th 665, relied upon by Block, is distinguishable. There, a daughter cared for her father, who transferred property to her in return for her selfless giving. There was no finding that the daughter suffered from alcoholism, was a spendthrift, or initiated the gift.

III. *Bona fide purchaser*

Block contends that the record does not support the trial court's finding that he was not a bona fide purchaser for value. Again, we disagree.

A bona fide purchaser is one who purchases for value, in good faith and without actual or constructive notice of another's rights. (*Oakdale Village Group v. Fong* (1996) 43 Cal.App.4th 539, 547.) The trial court's findings that at the time of the Joint Tenancy Deed, Block was on notice of defects in the transfer from Kay to Keith and yet failed to investigate the validity of the transfer are supported by substantial evidence.

As a frequent visitor to the Property, Block was aware of Kay's condition, of the relationship between Kay and Keith, and of Kay's complete reliance upon Keith. Block knew that Kay was and had been bedridden with significant loss of short term memory and that she relied entirely on Keith. Block also knew that Kay was incapable of arranging for the transfer without Keith's assistance. Block understood that the Deed was a gift. He was aware that it would have been irrational for Kay to transfer her only significant asset while she was alive, and particularly irrational for her to have transferred it to Keith. Block's position therefore fails.

Since we conclude that the record supports the trial court's finding that Block was not a bona fide purchaser for value, we need not reach Block's contention that his agreement with Keith was not void as a wager on the life of another.

DISPOSITION

The judgment appealed from is affirmed. The estate of Kay C. Ross shall recover its costs of appeal from Don Block.

NOT FOR PUBLICATION.

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We concur:

P.J.

BOREN

J.

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